

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

_____)	
MCI WORLDCOM NETWORK)	
SERVICES, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-1479
)	
PAETEC COMMUNICATIONS, INC.,)	
)	
Defendant.)	
_____)	

ORDER

This matter comes before the Court on Defendant's Motion in Limine to Exclude Evidence Related to Plaintiff's New Damage Calculations. Plaintiff originally sought damages of \$5,564,765.03 in its Complaint and First Amended Complaint. In Plaintiff's Fourth Supplemental Responses to Defendant's First Set of Interrogatories (September 28, 2005), Plaintiff disclosed new damage calculations of \$5,074,282.00. Plaintiff's new damage calculations were produced through a different process than its original damage calculations.

Plaintiff's new damage calculations were provided to Defendant more than three months after the discovery deadline (June 10, 2005) and Final Pretrial Conference (June 16, 2005). Plaintiff has no substantial justification for the untimeliness of its new damage calculations. See Fed. R. Civ. P. 37(c)(1).

Allowing Plaintiff to introduce evidence at trial relating to its new damage calculations is not harmless because Defendant, in preparing for trial, has justifiably relied on Plaintiff's original damage calculations. See id. It appearing to the Court that Plaintiff's new damage calculations are untimely and that Plaintiff should not be allowed to introduce evidence at trial relating to the new damage calculations disclosed in Plaintiff's Fourth Supplemental Responses to Defendant's First Set of Interrogatories, it is hereby

ORDERED that Defendant's Motion in Limine to Exclude Evidence Related to Plaintiff's New Damage Calculations is GRANTED.

/s/

CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
October 17, 2005